IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

WEDNESDAY, THE 29TH NOVEMBER 2006 / 8TH AGRAHAYANA 1928

WP(C).No. 17725 of 2004(I)

PETITIONER:

V.BAHULEYAN, RETIRED REGIONAL
TRANSPORT OFFICER, 'PRASANTHI', THEKKEVILA P.O.,
KOLLAM 16.

BY ADV. SRI.C.P.SUDHAKARA PRASAD (SR.)
SRI.ELVIN PETER P.J.

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY THE
SECRETARY TO GOVERNMENT, TRANSPORT (C) DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. THE SECRETARY TO GOVERNMENT,
TRANSPORT (C) DEPARTMENT, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI SHYSON P. MANGUZHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1 TRUE COPY OF SELECT LIST ISSUED AS PER G.O.(P). NO.17/2002/ TRAN. DTD. 15TH JUNE, 2002.

EXT.P2 TRUE COPY OF ORDER G.O.(RT.)NO.98/2002/TRAN. DTD. 6/1/2003.

EXT.P3 TRUE COPY OF ORDER G.O.(RT.) NO.360/2003/TRAN. DTD. 23/8/2003.

EXT.P4 TRUE COPY OF REPRESENTATION DTD. 11/2/2004 FILED BY THE PETITIONER BEFORE THE GOVT.

EXT.P5 TRUE COPY OF ORDER NO.3023/C3/2004/TRAN. DTD. 1/4/2004 ISSUED BY THE GOVERNMENT.

EXT.P6 TRUE COPY OF ORDER G.O.(RT)NO.337/2003/TRAN. DTD. 11/8/2003.

EXT.P7 TRUE COPY OF ORDER G.O.(RT.)NO.381/2003/TRAN. DTD. 4/9/2003.

P.R.RAMAN, J.

W.P.(C).NO.17725 OF 2004

Dated this the 29th day of November, 2006

JUDGMENT

Petitioner was appointed as L.D. Clerk in the Motor Vehicles Department on 28/8/1967. Thereafter, he was promoted as Regional Transport Officer from 17/8/1997. The next promotion post is the post of Deputy Transport Commissioner for which Regional Transport Officer is the feeder category. The Departmental Promotion Committee, which met on 18/5/2002, prepared a select list of Regional Transport Officers for promotion to the post of Deputy Transport Commissioner. A select list was accordingly published which is produced as Ext.P1 and the petitioner happened to be ranked as No.4 in the select list. Ext.P1 is dated 15th June, 2002. So however the petitioner was not promoted, since

disciplinary proceedings were pending against him. When a vacancy arose for the post of Deputy Commissioner on 1/12/2002 in the retirement vacancy of Sri Kunhambu, the petitioner, who was by-passed and Sl.No.5 in the rank list, Ext.P1, was promoted by Ext.P2 order dated 6/1/2003. The petitioner subsequently retired from service on 31/3/2003. The disciplinary proceedings initiated against the petitioner were dropped as per Government Order dated 23/8/2003, produced as Ext.P3 in the case. Subsequently the petitioner made a representation, Ext.P4 on 11/2/2004 wherein he sought for promotion as Deputy Transport Commissioner with effect from 6/1/2003 with all monetary benefits arising therefrom including arrears of salary and pension. This request in Ext.P4 was

rejected by Ext.P5 Government Order dated 1/4/2004. The petitioner impugns Ext.P5 order.

2. According to the petitioner, Note (iii) to Rule 28(b)(i)(7) of the Kerala State and Subordinate Services Rules provides that officers whose names are included in the select list, against whom disciplinary proceedings are taken departmentally for the imposition of major penalty, will not be promoted on the basis of inclusion of their names in the select list until they are exonerated of the charges against them and if the Officer is fully exonerated of the charges later, he shall be promoted on the basis of his position in the select list to the post which has been filled up on a temporary basis pending disposal of the charges against him. In case he is not fully exonerated, the

Departmental Promotion Committee is to consider each case on its own merits. It is the contention of the petitioner that when the petitioner was exonerated from the charges by dropping the disciplinary proceedings against him, he is entitled to be promoted with retrospective effect from the date on which his junior was promoted by Ext.P2. According to him, as per the charge memo issued on 15/3/2003, he was under suspension from service on 4/1/2003 and he was further reinstated in service on 15/3/2003 and eventually in that case also he was exonerated by Ext.P6 order and the suspension period in the latter case was also treated as on duty as per Ext.P7. According to him, in both the cases he having been exonerated and in view of the specific rule contained as noted supra,

he is entitled to be promoted to the category of Deputy Transport Commissioner with effect from 6/1/2003. He seeks for a writ of certiorari quashing Ext.P5, for a declaration that he is entitled to get promotion to the category of Deputy Transport Commissioner with effect from 6/1/2003 with all consequential benefits and for a direction to pay arrears of salary and revised pensionary benefits due to him reckoning his pay in the post of Deputy Transport Commissioner with effect from 6/1/2003.

3. Ext.P3 dated 23/8/2003 would show that the charges levelled against the petitioner as per memo of charges No.7413/C3/2000/Tran. dated 20/9/2002 was subsequently dropped. In Ext.P3 it is stated that the Government are satisfied that the petitioner, who was an RTO

then, cannot be held responsible for the decision of the Chairman to place the application before the RTA and moreover the retired officer has not caused any pecuniary loss to Government. It was on these reasons that the Government dropped the disciplinary proceedings initiated against him. It was thereafter that the petitioner preferred a representation, Ext.P4 which was turned down by Ext.P5, which is impugned in this writ petition. Ext.P5 admits the fact that the petitioner was exonerated from the charges vide G.O.(Rt).No.360/03.Tran. dated 23/8/2003 (by Ext.P3) i.e. after his retirement on 31/3/2003. At the same time his request for notional promotion was turned down, as it does not merit any consideration.

4. No counter affidavit is filed by the respondents in this case.

5. From the above, it is beyond doubt that though the petitioner was placed under suspension pending finalisation of the disciplinary action, he was reinstated on 15/3/2003. The petitioner retired on 31/3/2003. Thereafter, by G.O. (Rt.) No.360/03/Tran. dated 23/8/2003 (Ext.P3) he was exonerated from the charges, which is also the fact admitted in Ext.P5 order. It is true that an employee, against whom the proceedings for imposing a major penalty are pending, is not entitled to be promoted pending final decision in the disciplinary action as contemplated under Note (iii) to Rule 28(b)(i)(7) of the K.S. & SSR. But as per the same rule, if the Officer is exonerated from the

charges, he is entitled to be promoted on the basis of the position in the select list.

6. In **Delhi Jal Board v. Mahinder Singh (JT 2000 (10) SC 158)** the Apex Court held that the right to be considered by the Departmental Promotion Committee is a fundamental right guaranteed under Article 16 of the Constitution of India, provided a person is eligible and is in the zone of consideration. The sealed cover procedure permits the question of his promotion to be kept in abeyance till the result of any pending disciplinary inquiry. But the findings of the disciplinary inquiry exonerating the officer would have to be given effect to as they obviously relate back to the date on which the charges are framed. The mere fact that by the time the disciplinary proceedings in the first

inquiry ended in his favour and by the time the seal was opened to give effect to it, another departmental inquiry was started by the department, would not, come in the way of giving him the benefit of the assessment by the first Departmental Promotion Committee in his favour in the anterior selection.

7. Therefore, from the above principle as laid down by the Apex Court, a person, who is facing serious charges, may not actually be promoted, though his name is included in the rank list, that is to say his promotion will be deferred and in case he is ultimately exonerated, the mere pendency of the disciplinary action by itself will not take away his right of being promoted. In the present case, the petitioner is included in the rank list as Sl.No.4 and when a vacancy

arose on 1/12/2002, because of the pendency of the disciplinary action he was by-passed and his immediate junior was promoted in that vacancy. Ultimately, by Ext.P3 when he was exonerated, he stands restored to the original position. As a matter of fact, even Note (iii) to Rule 28(b) (i)(7) of the K.S. & S.S.R makes it abundantly clear that when the officer is fully exonerated of the charges, he would be promoted on the basis of the position in the select list for the post which was temporarily filled up pending disposal of the charges. But in this case the petitioner retired from service and therefore the question of giving actual promotion does not arise. That however will not disentitle him to claim for promotion on notional basis with effect from 1/12/2002 to the vacancy to which

in the ordinary course, he would have been promoted. Ext.P5 does not give any reason to reject his claim nor any reference made to the statutory rule as above. Therefore, Ext.P5 is quashed.

8. In the light of the specific rule as referred to above, it is declared that the petitioner is entitled for notional promotion with effect from 1/12/2002. But he will not be entitled for any monetary benefits, as he did not actually work in the said post. The petitioner will be entitled to fixation of salary as on the date of his retirement reckoning his service in the post of Deputy Transport Commissioner and the retiral benefits shall accordingly be fixed and the balance amount due (less whatever paid to him) shall be paid to the petitioner. His pension

shall also be refixed accordingly. This shall be done as expeditiously as possible, at any rate within a period of four months.

Writ Petition is allowed as above. No costs.

P.R.RAMAN,
Judge.

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